



**SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE**

**Minutes for**

**SPECIAL COMMISSION MEETING**

10:00 a.m., October 18, 2019

**Location:** 1330 Lady Street, Suite 401, Columbia, SC 29201

**Members Present:** Harry Dest (Chair), Hon. Thomas Cooper (phone), Billy Epps (phone), Jack Howle, Jr., Rep. Jay Jordan, Jr. (phone), Michael Lifsey, Sen. Gerald Malloy (phone), Ashley Pennington (phone), Yvonne Murray-Boyles (phone), John Nichols (phone), Walker Willcox (phone)

**Members Absent:** Hon. Daniel Pieper, Ashlin Potterfield

**Staff Present:** Hugh Ryan, Herverly Young (phone), Lawrence Brown, Rodney Grizzle

There being a quorum, the Chair called the meeting to order at 10:01 a.m.

**Circuit Public Defender Nominations:**

The Commission considered nominations for Circuit Public Defenders for the 3<sup>rd</sup>, 9<sup>th</sup> and 16<sup>th</sup> Circuits.

**Ninth Circuit:** The Commission was informed that the Ninth Circuit Public Defender Selection Panel had nominated Ashley Pennington to serve another four-year term to commence January 2, 2020. A motion was made to accept the nomination. The motion was seconded and approved by unanimous vote. Mr. Pennington recused himself from any participation or voting in this matter.

**Sixteenth Circuit:** The Commission was informed that the Sixteenth Circuit Public Defender Selection Panel had nominated B.J. Barrowclough to serve as the new Circuit Defender for a four-year term to commence on January 2, 2020 following the retirement of Harry Dest. Mr. Barrowclough was then invited to address the Commission regarding his nomination, after which, he excused from the meeting. A motion was then made to accept the nomination. The motion was seconded and approved by unanimous vote. Mr. Dest recused himself from any participation or voting in this matter.

**Third Circuit:** The Commission was informed that the Third Circuit Public Defender Selection Panel had nominated Edgar Donald to serve a four-year term as Circuit Defender commencing January 2, 2020, following the retirement of Jack Howle, Jr.

Director Ryan informed the Commission that Timothy Murphy and Calvin Hastie, both of whom were applicants for the position, had filed complaints regarding the election and composition of the Third Circuit Selection Panel. Mr. Murphy's original complaint letter dated October 10, 2019 alleged that Attorneys Ken Young and John Keffer, two members elected to serve on the Selection Panel at the August 29, 2019 Bar meeting, had conflicts of interest, because they were former law partners of the nominated applicant. In a follow-up email dated October 15, 2019, Mr. Murphy further alleged that the election process was defective because the Sumter County Bar meeting to elect members of the Selection Panel was held with only two days' notice, rather than the seven days' notice specified in the Guidelines. Mr. Murphy did not allege any facts that the shortened notice of the meeting had any actual impact on the outcome of the election. Mr. Hastie's complaint, received October 17, 2019, also alleged a conflict in the two former law partners of Mr. Donald serving on the Selection Panel. However, both Mr. Murphy and Mr. Hastie also stated that the members of the Sumter County Bar knew the identities of the applicants for Circuit Defender before they voted for the Selection Panel members. Although the guidelines specify that any complaint regarding alleged improper acts or omissions in the election of members to a Circuit Public Defender Selection Panel must be made in writing within 10 days of discovery, neither Mr. Murphy nor Mr. Hastie made any complaint at the time of the August 29 election or thereafter, until after the Panel had completed its work and made its nomination. The Commission also noted that Mr. Donald's nomination was a unanimous decision of all seven panel members.

Having fully considered and discussed the allegations in the complaints and the applicable guidelines, the Commission did not direct any further investigation into the matter. The Commission directed that a letter outlining the Commission's conclusions and decision be drafted to be sent to the complainants.

Mr. Donald was invited to address the Commission regarding his nomination. He was then excused from the meeting.

A motion was made to accept the nomination by the Third Circuit Selection Panel of Edgar Donald to serve as Third Circuit Defender for a four-year term commencing January 2, 2020. The motion was seconded and approved by unanimous vote. Mr. Howle recused himself from participation of voting in this matter.

There being no further business, the meeting was adjourned at 10:39 a.m.

NOTE: The Commission did not enter in to executive session during this meeting.

Respectfully submitted,

Lawrence Brown  
Deputy General Counsel